THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 05-09-2007

WRIT PETITION No. 9313 OF 2006

BETWEEN:

Sri Visakha Seven Seater Auto Owners Welfare Association of Gajuwaka,
Visakhapatnam-26, represented by its President Kasi David.

…Petitioner

And

Commissioner of Police, Visakhapatnam and others.

…Respondents

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ORDER:

The writ petitioner Sri Visakha Seven Seater Auto Owners Welfare Association, seeks to issue a writ of mandamus, declaring the action of the respondents in not allowing to ply seven seater autos of the members of the petitioner association in Visakhapatnam city and its suburbs in spite of the fact that they have valid and subsisting permits issued by the Regional Transport Authority, Visakhapatnam to ply their seven seater Autos in the entire state of Andhra Pradesh including Visakhapatnam city.

1. It is stated that there is no order, rule of regulation which prohibits plying of seven seater Autos in Visakhapatnam city and suburbs during the subsistence of the permits. The petitioner association has more than 70 members owning seven seater autos, having valid permits issued by the third respondent to ply their respective autos in the entire State of Andhra Pradesh except in the prohibited routes. As per the permits, they got right to ply their autos and the respondents cannot prohibit them to ply their autos in Visakhapatnam city.

The members of the petitioner association are residents of Gajuwaka and its surrounding areas. They are catering to the needs of the middle and lower middle class people who cannot afford private or personal transport. The respondents are unnecessarily harassing the members of the association by intercepting their vehicles and booking them for the alleged offences of violating the provisions of law stating that seven seater autos cannot enter in Visakhpatnam city. In fact Gajuwaka and other places are not included in Visakhpatnam city limits. The respondents are collecting huge amounts towards fine though there is no prohibition to ply their autos in Visakhpatnam city. No notification has been issued by the respondents prohibiting the plying of autos in Visakhapatnam city.

It is further stated that recently, Visakhapatnam has been notified as “Greater Visakha” by virtue of which, the sub urban areas of Visakhapatnam and Gajuwaka etc., have been included and if the petitioners are prohibited to pay their autos even during the subsistence of permit period, they will suffer serious and irreparable loss. The petitioner association is registered with the Registrar of Societies with registration No.1511 of 2005 on 19-9-2005. As per the permit issued to the members of the association, the route/area for which the permit is valid in Andhra Pradesh State and expiry of permits

are on various dates during the year 2008-09.

It is the case of the petitioner that the members of the association are entitled for renewal of their permits as there is no any prohibition for renewal of their permits. Permits are issued in Form P.C under Rule 174(iii) of the Andhra Pradesh Motor Vehicles Rules 1989 (for short "the rules").

2. The first respondent-Commissioner of Police, Visakhapatnam filed a counter stating that while issuing permits by the Regional Transport Authority to the seven seater autos at the time of registration of the vehicles, restrictions are imposed to ply the vehicles within Visakhapatnam city limits. While granting fresh permits also, specific restrictions were being imposed prohibiting seven seater autos from plying within Visakhapatnam city limits. It is further stated that seven seater autos are being allowed to ply in sub urban areas though Visakhapatna city limits were expanded by virtue of creation of Greater Visakha up to the radius of 60 Kms., from the core of the city. It is further stated that the Government have issued orders in G.O.Ms.No155, dated 7-9-2002 restricting the number of 3-wheeled contract carriages (seven seater autos) in Visakhapatnam at 8,300 vehicles. Replacement of any of the existing 3-wheeled contract carriages covered by permit as per Rule 211 of the rules shall be by LPG driven 3-wheeled contract carriages only. 7th September, 2002 is the date from

which no new permit in respect of 3-wheeled contract carriages shall be granted by the Regional Transport Authority, Visakhapatnam. It is further stated that those autos with regard to which no restriction was imposed are being permitted to ply within the city limits. The authorities of Police Department are booking cases only if any violations are found as per the permit issued by the Regional Transport Authority.

3. The Deputy Transport Commissioner filed a counter on behalf of the third respondent, stating that as per G.O.Ms.No.155, dated 7-9-2002 of Transport, Roads & Buildings (Tr.II) Department, the Government have issued orders to restrict the number of 3-wheeled contract carriages in Visakhapatnam city at 8,300 and directed the third respondent not to grant new permits in respect of 3-wheeled contract carriages from 7-9-2002 in Visakhapatnam. It was also directed that replacement of any existing 3-wheeled contract carriages covered by the permit as per Rule 211 of the rules shall be by LPG driven 3-wheeled contract carriages only. After issuance of afore said orders, no permit in respect of 3-wheeled contract carriages is issued to ply in Visakhapatnam city limits and the permits are being issued in respect of 3-wheeled contract carriages of 7 in all vehicles to ply in Visakhapatnam District except Visakhapatnam city limits. The State Transport Authority in its minutes dated 29-1-2003 resolved to prohibit the operation of 3-wheeled contract carriages on all National

Highways excluding Municipal and Gram Panchayat limits in Andhra Pradesh in exercise of powers conferred under Rule 397 of the rules read with Section 115 of Motor Vehicles Act, 1988 (for short “the Act) and it was communicated vide Memo No.16856/R1/2002, dated 29-1-2003 of the Transport Commissioner, Andhra Pradesh, Hyderabad. Gram Panchayat limits means “Village Site only”. If any violation of plying the 3-wheeled contract carriages are found plying violating the above permit conditions, cases are being booked by the checking officers of Transport Department and Police Department. It is stated that in respect of contract carriages of 7 in all seating capacity, permits were issued prior to 7-9-2002 without any restriction to ply in Visakhapatnam city, are allowed to ply in the city. The vehicles for which permits were issued subsequent to the said orders excluding the city limits are only restricted. Therefore, the contention of the petitioner that all vehicles are restricted to ply in Visakhpatnam city is in correct. It is stated that Government have got power under Section 74(3)(a) of the Act, to limit the number of contract carriages and accordingly G.O.Ms.No.155, dated 7-9-2002 was issued limiting the contract carriages of 3-wheels in all having 7 seats up to 8,300 only in Visakhapatnam and replacement of any existing 3-wheeled contract carriages covered by permit as per rule 211 of the rules shall be by LPG driven 3-wheeled contract carriages.

Therefore, from 7th September, 2002, no new permit in respect of 3-wheeled contract carriages have been granted by the Regional Transport Authority, Visakhapatnam.

It is further stated that as per rule 397(ii) of the rules, the State Transport Authority and Regional Transport Authority have power to impose certain limits including specify the area or the road for the use of the vehicles. The State Transport Authority in its minutes dated 29-1-2003 resolved to prohibit 3-wheeled contract carriages on all National Highways excluding Municipal and Gram Panchayat limits in Andhra Pradesh in exercise of the powers conferred under Rule 397 of the rules read with Section 115 of the Act. The said resolution was also communicated in Memo No.16856/R1/2002 dated 29-1-2003 to all the offices of the Secretary, Regional Transport Authorities. As the said Memo was not implemented, the Visakha District (Rural) Passengers Association, registered under the Societies Registration Act, filed W.P.No.4475 of 2003, seeking implementation of the said Memo and this Court in W.P.M.P.No.5901 of 2003 directed to implement the said Memo. Therefore, the Department have been taking action against the vehicles which are found plying on National Highways as well as carrying excess persons in a dangerous manner and the persons driving the vehicles not having driving licence, over speed and violating the permit conditions etc.

There was no any unnecessary harassment except taking action in accordance with law and none of the members of the petitioner association were harassed by registering any false cases. The contention that the members of the petitioner association were having permits granted prior to said Government Order are not allowed to play their vehicles in Visakhapatnam city is not correct.

4. The learned counsel appearing for the petitioner association submits that in the case of **Mini Taxi Owners' and Drivers Association, Hyderabad and others Vs. State of A.P. and another**[1], this Court held that the Commissioner of Police is empowered to regulate the traffic in the public street or public place under Section 21(1)(b) of the Hyderabad City Police Act, but has no power to prohibit the movement of the seven seater motor cabs within the twin cities of Hyderabad and Secunderabad. Accordingly, the proceedings issued by the Commissioner of Police, prohibiting the movement of the seven seater autos within the twin cities of Hyderabad and Secunderabad are set aside, holding that the said exercise of powers by him was out side the scope of Section 21(1)(b) of the Hyderabad City Police Act. However, the Government was directed to take appropriate action as per the provisions of the Motor Vehicles Act to regulate the traffic and for maintenance of safety and free flow of traffic, prevention of danger, obstruction

and inconvenience to the public in twin cities of Hyderabad and Secunderabad. The said Judgment was also upheld by the Division Bench of this Court in Writ Appeals between the same parties in 2001(4) ALD 245.

5 It is not in dispute that the Government have got power to limit the number of contract carriages operating in all city routes and towns with a population of not less than five lakhs under Sec.74(3)(a) of the Act. Therefore, it cannot be said that the orders of the Government in G.O.Ms.No.155, Transport Roads & Buildings (Tr.II) Department, dated 7-9-2002 deciding to restrict the number of 3-wheeled contract carriages in Visakhapatnam limiting up to 8,300 is illegal or arbitrary. The Government restricted the 3-wheeled contract carriages limiting 8,300 in Visakhapatnam as the road network being very limited, they are posing problems of congestion in road traffic and traffic control. Apart from that the rate of accidents and also causing atmospheric pollution, the Government have taken the aforesaid decision. It is also pertinent to note that as per the said notification any replacement of existing vehicles at 8,300 covered by the permit under Rule 211 of the rules shall be replaced by L.P.G driven 3-wheeled contract carriages only. No new permit shall be granted from 7-9-2002.

6. Under Rule 397 of the Rules, the State Transport Authority and the Regional Transport Authority shall have the power to impose speed limits, limit on the laden weight or axle

weight or dimensions of motor vehicles and to prohibit or restrict the use of motor vehicles in a specified area or in respect of any road and to designate any road as main road. In exercise of the powers under Section 397(ii) of the Rules read with Section 115 of the Act, the State Transport Authority vide its minutes dated 29-1-2003, resolved prohibiting 3-wheeled contract carriages on all National Highways excluding Municipal and Grampanchayat limits in the State of Andhra Pradesh, clarifying that the Grampanchayat limits means: “Village site only”. Accordingly, the said decision taken in the minutes of the resolution dated 29-1-2003 of State Transport authority was communicated by Memo dated 29-1-2003 to all the Secretaries of Regional Transport Authorities. Therefore, I am of the opinion that in view of the aforesaid notification issued by the Government in G.O.Ms.No.155, dated 7-9-2002 and the restrictions imposed by the State Transport Authority, restricting the use of 3-wheeled contract carriages on the National Highways excluding the Municipal and Granpanchayat limits, even the existing permit holders cannot ply the 3-wheeled contract carriages on the National Highways. Even as per the Government Order and the resolution passed by the State Transport Authority, there cannot be any objection for the existing permit holders to whom the permits have been granted prior to 7-9-2002 to ply their vehicles in Visakhpatnam city and

its suburbs excluding the National Highways. Grant of new permits has been prohibited from 7-9-2002 onwards and in fact, no new permit can be issued. In the counter it is also stated that the authorities never restricted the holders of permits issued prior to 7-9-2002 to ply their vehicles in Visakhapatnam city.

7. Accordingly, the writ petition is disposed of directing the respondents not to interfere with the plying of seven seater autos of the members of petitioner association in Visakhapatnam city and its suburbs in whomsoever permits have been granted prior to 7-9-2002. But, however, none of the permit holders are entitled to ply their vehicles on all National Highways except in Municipal and Grampanchayat limits. It is also open for the respondents and their subordinates to take action against the permit holders if they violates the terms and conditions of the permits or the provisions of Motor Vehicles Act and Rules made there under and the aforesaid notification and resolution of State Transport authority in accordance with law.

V.ESWARAIAH, J

Date: 05-09-2007.

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[1] 2001(2) ALD 402